IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4375 OF 2003

1. Shri Sukhdeo Maruti Shete)
Age Occ: Agriculture)

2. Shri Dattatraya Maruti Shete)
Age 45 years, Occ: Agriculture)

Both resident of Bori Budruk, Tal.)
Junnar, District :- Thane.) ...Petitioners.

V/s

1. Special Land Acquisition Officer)
Officer No.22, Collector)
Office Compound, Pune - 411001.)
)

2. District Resettlement Officer)
Deputy Director/Collector,)
District :- Pune.)
)

3. Divisional Commissioner,)
Revenue Division Pune, Pune)
)

4. Resettlement Officer)
Kukadi Project)
Narayangaon (Junnar), Pune.)
)

5. State of Maharashtra)
)

6. Shri Dasharath Mahadu Hande)
Resident of Hivare Budaruk)
Taluka Junnar District - Pune.)...Respondents.

Mr. U.B. Nighot for the petitioners.

Mr. P.P. Kakade for respondent Nos. 1 to 5

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 24th August, 2005.

ORAL JUDGMENT: (Per V. M. KANADE, J.)

1. The petitioners by this petition are challenging acquisition proceedings initiated by the respondent - Special Land Acquisition Officer in respect of Gat No. 45P, ademasuring 11 and 22 R situated at village Bori Khurd, Taluka - Junnar, Distrit Pune. The principal grievance of the petitioners is that though, at the time of the inquiry which was initiated under section 5-A of the Land Acquisition Act, they had offered alternative land belonging to them in lieu of the land which was sought to be acquired from Gat Nos. 421 and 389 which was situated at village Bori Khurd, Taluka - Junnar, District Pune, the Land Acquisition Officer had proceeded to acquire the land in question without accepting the alternative offer which they had made.

2. Few relevant dates in respect of the acquisition proceedings are as follows.

3. The notification under section 4 of the Land Acquisition Act was issued on 23/11/1989. Thereafter, notification under section 6 was issued on 08/01/1991 and, finally, the award was passed on 31/05/1991. The petitioners, in the meantime, had filed suit, challenging the acquisition proceedings being Regular

Civil Suit No. 1883 of 1996 in the Court of Civil Judge, Senior Division, Pune. However, the suit was dismissed. Thereafter, an application was preferred by the petitioners for the purpose of deleting the acquisition of the land before respondent No.2 - District Resettlement Officer. However, the said application was rejected. The petitioners, thereafter, preferred an appeal before the Divisional Commissioner, Revenue Division, Pune. However, the appeal was also dismissed. However, respondent No.3 remanded the matter back to respondent No.2. Thereafter, the respondent No.2, by order dated 07/11/2001, called the petitioners for final hearing of the appeal on 25/02/2002. The said appeal was finally decided and rejected on 25/02/2003 and, thereafter, the present Petition has been filed.

4. The learned Counsel appearing on behalf of the petitioners relied on the Circular issued by the Government of Maharashtra and also on the guidelines which have been laid down by the Government of Maharashtra which are compiled in a booklet which is published by the Government. He submitted that, in the said Circular and booklet which is issued by the Government of Maharashtra, it is specifically laid down that the person whose land is sought to be

acquired can offer alternate land during the course of the inquiry under section 5-A. He submitted that a specific application was made by the petitioners during the inquiry. However, their request was not considered and, therefore, the acquisition proceedings are liable to be quashed and set aside. The learned Counsel also relied on the judgment of the Supreme Court in the case of Dubas Bahu Balwan Vs. Director of Resettlement and Ors. in Civil Appeal No.11809 of 1995 decided on 01/12/1998. He invited our attention to the fact that in the said case the Supreme Court also, after taking into consideration the booklet which was issued by the concerned authorities on 10/07/1981, had directed the Commissioner to take into account the guidelines laid down in the said booklet and decide the matter afresh.

5. The learned Counsel appearing on behalf of the petitioners also invited our attention to the affidavit-in-reply filed by the Government and also pointed out that, in the report, which was submitted by the Special Land Acquisition Officer after inquiry was held under section 5-A, the fact that the alternative land was offered had been recorded. We are unable to accept this submission made by the learned Counsel appearing on behalf of the

petitioners. It is pertinent to note that the acquisition proceedings culminated in an award being passed on 31/05/1991. Thereafter, possession of the land was taken by the Government on 29/10/1992. The respondent No.6 also has filed affidavit-in-rely in which he has stated that after possession was taken from the petitioners, the said land was allotted to him and he had taken possession of the said land. In para 3 and 7 of the said affidavit-in-rely, he has stated that the possession of Gat No.45-P was handed over to him in the year 2001 and that he was cultivating the said land. He has further stated that, initially, the name of respondent No.2 was shown by Mutation Entry No.852 dated 28/1/1993. He has further stated that after the possession was handed over to respondent No.6, that Mutation Entry was altered and his name was shown by Mutation Entry No. 1221 dated 20/10/2001. He has further stated that he is in absolute possession and is cultivating the land and, at the time of delivery of the possession of the land, a letter of possession was prepared and issued in his favour by recording panchanama to that effect. In the affidavit-in-reply filed by the Special Land Acquisition Officer No.22, it is stated that the contention of the petitioners that respondent No.4 had prepared a bogus panchanama on 16/10/2001 for

recording the name of respondent No.6 is not true and correct. She has stated that from the order of respondent No.2 dated 25/02/2003 which is annexed at Exhibit-H to the Petition, it was clear that the land of the petitioner had already been allotted to the project affected person Shri Dashrath Mahadu Hande i.e. respondent No.6 by his order No. DRO/Kukdl/S.R.120/1996 dated 09/02/1996 before filing any legal proceedings by the petitioners. As regards the submission made by the learned Counsel for the petitioner in respect of the Circular issued by the Government of Maharashtra and referred to in the Judgment of the Supreme Court in the case of Dubas Bahu Balwan (supra) is concerned, in our view, the Supreme Court had given certain directions to the Commissioner, Pune Division to consider the matter afresh in the facts and circumstances of the said case and no ratio has been laid down in the said order. Apart from that the Government in its reply has stated that the said Circular has been cancelled by the Government. In view of this, it is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioners. There is, therefore, no substance in the submissions made by the learned Counsel appearing on behalf of the petitioners. The petition is, therefore, liable to be

dismissed.

6. Accordingly, the Petition is dismissed. Rule is discharged with no order as to costs. Interim order, if any, granted at the time of admission of the Petition, is vacated.

(R.M.S. KHANDEPARKAR, J.)

(V. M. KANADE, J.)